

STORAGE NAME: h4015s1.rpp

DATE: February 3, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY AND PROBATE
ANALYSIS**

BILL #: CS/HB 4015 (PCB RC 00-08)

RELATING TO: Florida Statutes/Repeals

SPONSOR(S): Committees on Real Property & Probate and Rules & Calendar, and Representative Byrd

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES AND CALENDAR YEAS 17 NAYS 0
 - (2) REAL PROPERTY AND PROBATE YEAS 7 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill repeals statutes that have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Committee on Real Property and Probate was asked to review a number of sections of the Florida Statutes to determine if those sections have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded. The committee identified a number of such sections and referred that information to the House Committee on Rules and Calendar, which resulted in the drafting and passage of Proposed Committee Bill RC 00-08 by that committee. The Proposed Committee Bill came before the Committee on Real Property and Probate as House Bill 4015. See "Section-by-Section Analysis" for present situation on each of the sections of the bill.

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Repeals s. 28.15, F.S.

Chapter 28, F.S., relates to clerks of the circuit courts. Section 28.15, F.S., enacted in 1853, provides that certain records of the clerks of court of the Superior Courts are to be placed in the custody and control of the Circuit Court Clerks. The Superior Courts were the United States territorial courts created by Congress, and the Circuit Courts were the courts created by the first state legislature. Carter v. Bennett, 4 Fla. 283 (1852), error dismissed 56 U.S. 354, held that the Circuit Court clerks had no right to demand the records of the Superior Court clerks absent legislative action. By now, the Circuit Court clerks should have taken possession of all of the books and records previously held by the Superior Court clerks that the Circuit Court clerks are entitled to; accordingly, the statute is obsolete.

Section 2: Repeals ss. 55.08, 55.09, and 55.101, F.S.

Chapter 55, F.S., relates to judgments. Section 55.08, F.S., relates to judgments entered prior to June 5, 1939, and provides that a circuit court judgment shall be a lien on property of a defendant for twenty years. Judgments in effect prior to June 5, 1939, have since expired. The statute is obsolete.

Section 55.09, F.S., relates to judgments of inferior courts entered prior to June 5, 1939, and provides that a court judgment entered by a court other than a circuit court shall be a lien on property of the defendant for twenty years. Judgments in effect prior to June 5, 1939, have since expired. The statute is obsolete.

Section 55.101, F.S., enacted in 1971, provides that judgments recorded pursuant to the provisions of former s. 28.21(1), F.S., or former s. 28.221, F.S., are validated; that the judgments and decrees are declared to be liens on real property in the counties where certified copies thereof are recorded from the date of recordation; and that any judgment or decree recorded subsequent to June 26, 1967, shall not be a lien on property unless recorded according to s. 55.10, F.S. (which section was also amended by the same act in 1971). Any affected judgments have since expired. The statute is obsolete.

Section 3: Repeals s. 74.121, F.S.

Chapter 74, F.S., relates to proceedings supplemental to eminent domain. The chapter was enacted in 1965,¹ and subsequently amended. Section 74.121, F.S., provides an initial effective date of October 1, 1965, for the original enactment of the chapter. The effective date has passed and thus it is no longer necessary to state the effective date. Section 74.121, F.S., is obsolete.

Section 4: Repeals s. 95.022, F.S.

Chapter 95, F.S., relates to limitations of actions and actions for adverse possession. The chapter was substantially re-written in 1974.² Section 95.022, F.S., a part of that 1974 enactment, provides an effective date of January 1, 1975, for those re-written sections, which effective date has passed. The section also contains a savings clause, which expired January 1, 1976. The provisions at s. 95.022, F.S., are obsolete.

Section 5: Repeals s. 196.011(13), F.S.

Chapter 196, F.S., relates to exemption from ad valorem taxation. Section 196.011, F.S., relates to the annual application required to renew an exemption from ad valorem taxation. Section 196.011(13), F.S., provides that particular charitable organizations that failed to timely file an application for exemption for the 1994 tax year may file an untimely application. The statute specified that it would expire one year after enactment.³ The statute is now obsolete.

¹ Chapter 65-369, L.O.F.

² Chapter 74-382, L.O.F.

³ That time period expired May 28, 1999.

Section 6: Repeals s. 198.331, F.S.

Chapter 198, F.S., relates to the estate tax. Section 198.331, F.S., enacted in 1957,⁴ makes certain provisions of Chapter 198, F.S., regarding estate taxes, retroactive to October 1, 1933. Because the statute of limitation on collection of the estate tax is 12 years,⁵ the statute has expired by its terms and is thus obsolete.

Section 7: Repeals s. 689.18(6), F.S.

Chapter 689, F.S., relates to conveyances⁶ of land and declarations of trust. Section 689.18, F.S., deals with the cancellation of reverter language in conveyances of real property. This subsection gave the holders of reversionary rights one year within which to enforce those rights. The time period expired July 1, 1952. This subsection was held unconstitutional in Biltmore Village v. Royal, 71 So.2d 727 (Fla. 1954).

Section 8: Repeals s. 692.101(4), F.S.

Chapter 692, F.S., relates to conveyances by or to particular entities. Section 692.101, F.S., sets forth a procedure for conveyances of real property by or to an unincorporated church, and further provides that certain conveyances made prior to enactment of the section are valid. Subsection (4) provides that the provisions of subsections (1)-(3) that make prior conveyances valid are not applicable to any conveyance contested by suit filed within 2 years after May 21, 1986. The provision is now obsolete.

Section 9: Repeals s. 694.01, F.S.

Chapter 694, F.S., is entitled "Certain Conveyances Made Valid."⁷ Section 694.01, F.S., provides that a conveyance for good consideration between January 17, 1817, and October 1, 1822, is considered valid even if such conveyance had not been executed according to the formalities of Spanish law, so long as the instrument of conveyance was recorded by December 24, 1823.⁸ This statute "is little more than historical interest."⁹

⁴ Chapter 57-108, L.O.F.

⁵ Section 198.22, F.S.

⁶ A conveyance is defined as: "In its most common usage, transfer of title to land from one person, or class of persons, to another by deed. Term may also include assignment, lease, mortgage or encumbrance of land. Generally, every instrument in writing by which an estate or interest in the realty is created." *Black's Law Dictionary, 6th Edition*

⁷ The statutes of this chapter are curative acts. "Curative acts are statutes that purport to validate at once retrospectively certain past transactions or proceedings, which theretofore were ineffectual because there had been a failure to comply in their consummation with legal requirements then in effect." *Curative Acts and Limitations Acts Designed to Remedy Defects in Florida Land Titles -- I-IV*, 8 U.Fla.L.R. 365, 379 (1955), by Professor James W. Day.

⁸ On February 22, 1819, the King of Spain granted and ceded by treaty the Florida territories, less any properties that had conveyed to private individuals by Spanish land grants. The treaty was ratified by Congress on February 22, 1821. Acts of Congress ratified and confirmed the private ownership of the properties described in the Spanish land grants. *Sovereignty Lands in Florida: Lost in a Swamp of Ambiguity*, 38 U.Fla.L.R. 347, 350-51 (1986), by Professor Joseph W. Jacobs and Alan B. Fields, Esquire.

⁹ *Florida Curative Statutes*, 22 Fla.L.J. 153 (1948), by William H. Rogers, Esquire. Section 694.01, F.S., was passed by the territorial government in 1823.

Section 10: Repeals s. 695.20, F.S.

Chapter 695, F.S., is entitled "Record of Conveyances of Real Estate." This statute, "provides that recorded contracts for purchases of lands, made prior to January 1, 1930, and requiring the purchase price to be paid within ten years, shall no longer constitute constructive notice unless, within six months from April 26, 1941, the purchaser procures and records a deed or other writing recognizing the contract, or sues to enforce the contract."¹⁰ The six month limitation expired October 27, 1941.

Sections 11, 12, and 13: Repeals s. 696.04, F.S., and amends cross-references to that section.

Chapter 696, F.S., relates to recording of contracts and documents in the public records. Sections 696.01-.03, F.S., provide that a contract for the sale of real property must be acknowledged in order to be recorded, an assignment of a contract for the sale of real property is not entitled to be recorded unless the original is recorded or entitled to be recorded, and that certain agreements executed by an agent or attorney may be recorded. These provisions were all effective as of June 6, 1927. Section 696.04, F.S., provides that ss. 696.01-.03, F.S., apply to all contracts and instruments which had not been recorded by June 6, 1927. It is likely that any contract or agreement executed prior to June 6, 1927, would have either been fully executed, or recorded, by now. Section 13 repeals s. 696.04, F.S., sections 11 and 12 of this bill correct cross-references to the repealed s. 696.04, F.S., that are in s. 696.02, F.S. and in s. 696.03, F.S.

Section 14: Amends s. 718.401(1)(d), F.S.

Chapter 718, F.S., relates to condominiums. Section 718.401(1)(d), F.S., provides procedures for litigation of disputes when a condominium is on leased property. Subparagraph 3. provides that paragraph (d) does not apply to any litigation pending on October 1, 1979. It is highly unlikely than any such litigation is still pending in court twenty years later, accordingly subparagraph 3. is stricken from paragraph (d).

Section 15: Repeals s. 718.622, F.S.

Chapter 718, F.S., relates to condominiums. Section 718.622, F.S., is contained within Part VI of Chapter 718, F.S., which part provides the procedures for conversion of an existing real property development into the condominium form of ownership. Section 718.622, F.S., relates to conversions in progress on May 1, 1980. According to the Bureau of Condominiums,¹¹ no conversions in progress on May 1, 1980, remain pending; thus, all of s. 718.622, F.S., is obsolete.

¹⁰ *Florida Curative Statutes*, 22 Fla.L.J. 153, 157 (1948), by William H. Rogers, Esquire, stated that this statute is "very limited in scope and will not cover many cases which really ought to be covered."

¹¹ Telephone conference with Julie Baker, Bureau Chief of the Bureau of Condominiums, Division of Florida Land Sales, Department of Business and Professional Regulation, on January 5, 2000.

Section 16: Repeals s. 719.203(6), F.S.

Chapter 719, F.S., relates to cooperatives. Section 719.203, F.S., specifies the construction warranties required of a cooperative developer. Subsection (6) provides that s. 719.203, F.S., is not applicable to a cooperative in which 10 percent or more of the units are under contract to prospective purchasers prior to July 1, 1974, or to a cooperative building on which construction was commenced prior to July 1, 1974. It is highly unlikely that any cooperative is affected by this subsection today.

Section 17: Amends s. 719.401(1)(d), F.S.

Chapter 719, F.S., relates to cooperatives. Section 719.401(1)(d), F.S., provides procedures for litigation of disputes when a cooperative is on leased property. Subparagraph 3. provides that paragraph (d) does not apply to any litigation pending on October 1, 1979. It is highly unlikely than any such litigation is still pending in court twenty years later, accordingly, subparagraph 3. is stricken from paragraph (d).¹²

Section 18: Provides that this act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

none

¹² See also s. 718.401(1)(d)3., F.S., above.

D. FISCAL COMMENTS:

none

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

none

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 18, 2000, the Committee on Real Property and Probate passed HB 4015, as amended, and reported it out favorably as a committee substitute. Two amendments were offered by Representative Farkas. The first amendment deleted section 6 from the bill. Section 6 would have amended s. 193.155, F.S., relating to the taxable value of homestead real property, to remove the dates from the formula expressed at s. 193.155, F.S.¹³ The second amendment deletes Section 5 from the bill. Section 5 would have repealed s. 117.05(3)(b),

¹³ Amendment of that section had been questioned because it was believed the dates were necessary for correct calculation of the mathematical formula in the statute.

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F.S., which provides the phase-out of notary impression-type seals.¹⁴ The second amendment also repeals s. 689.18(6), F.S., s. 692.101(4), F.S., s. 694.01, F.S., s. 695.20, F.S., s. 696.04, F.S., s. 718.401(1)(d)3., F.S., s. 718.622, F.S., s. 719.203(6), F.S., and s. 718.401(1)(d)3., F.S., and corrects cross-references in s. 696.02, F.S., and s. 696.03, F.S.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D, J.D.

¹⁴ Repeal of that section had been questioned because it was thought that, while impression-type seals have been phased out in favor of rubber stamp notary seals, persons may need to refer to this section to confirm the validity of an impression-type notary seal on a document notarized prior to the date after which rubber stamp seals were required on all notarized documents.